Decision **DRAFT DECISION OF ALJ BARNETT (Mailed 3/3/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Shell California Pipeline Company LLC and Crimson California Pipeline L.P., pursuant to Section 851 of the Public Utilities Code, for Approval of the Purchase and Sale of Certain Public Utility Pipeline Assets.	Application 04-06-002 (Filed June 1, 2004)

DECISION GRANTING APPLICATION

Shell California Pipeline Company LLC (Shell) and Crimson California Pipeline L.P. (Crimson) (Joint Applicants) request authority for Shell to sell and Crimson to acquire certain public utility pipeline assets, pursuant to Section 851 of the Public Utilities Code.

Applicant Shell is a Delaware limited liability company. Shell's principal place of business is located in Carson, California. Shell owns and operates a substantial number of pipelines transporting crude oil, gasoline, jet fuel, diesel fuel, and other petroleum products in California. It is a common carrier pipeline corporation, subject to the jurisdiction of this Commission, and has tariffs for its California pipelines on file with this Commission.

Applicant Crimson is a California limited partnership. Its general partner is Crimson Pipeline L.P. In turn, the general partner of Crimson Pipeline L.P. is Crimson Pipeline Management, Inc. (CPMI), a California corporation. CPMI is

privately held.[1] Applicant Crimson has been formed as a limited partnership for the specific purpose, among others, of owning, operating, and managing smaller, marginal, or idle pipelines and providing pipeline transportation services to the public.

Shell and Crimson have executed a Purchase and Sale Agreement (PSA) which sets forth the terms and conditions under which certain pipeline assets currently devoted to public utility service will be sold by Shell to Crimson. The PSA has been submitted under seal. Under the terms of the PSA, following receipt of Commission approval and satisfaction of other conditions to closing, certain pipeline assets will be transferred to Crimson. Crimson will own and operate the acquired pipeline assets as a common carrier pipeline corporation subject to the jurisdiction of this Commission. It is Crimson's intention to own and operate the assets consistent with their existing authorized uses, while seeking to increase economic efficiency through enhanced management practices. Tariff rates and the terms and conditions of service currently applicable to the pipeline assets that are the subject of this application will be retained and republished in the name of Crimson.

Applicants have provided system maps illustrating the regulated crude oil and refined petroleum products pipeline systems that are being sold. The active pipeline systems covered by the transaction are the Ventura 10" crude line, the Thums common carrier pipeline, the Filmore to Ventura 8" line (active from the

[1] The parent of CPMI is Crimson Resource Management Corp. (CRMC), a Colorado corporation. CRMC currently operates in excess of thirty petroleum production properties located in four different counties, with the bulk of its operations in Kern County. CRMC, which has about 50 employees, produces about 4,000 BOEPD (barrels oil equivalent per day).

Sespe tie-in to Ventura), the Ventura gathering line (C&D Block, San Miguelito), and a portion of the Brea East line (about one mile of active pipe). The idle Shell assets are a portion of the Brea East line (idle from Leffingwell/Imperial to Site Dr/Central), the Newhall to Ventura line (idle from Newhall to the Sespe tie-in), the Ventura gathering line, and the Van Nuys to Ventura products line. They have also identified the real property interests that are the subject of the transaction and the rights-of-way and permits that will be transferred from Shell to Crimson under the PSA.

Applicants assert that:

(a) The book cost of the regulated assets that are being transferred from Shell to Crimson is $7,941,000. The original cost of these regulated assets is unknown. The agreed purchase price for the regulated assets is set forth in Article 2 of the Agreement. The total purchase price is allocated to the purchase of the regulated assets being sold under the Agreement.

(b) Crimson has entered into the subject transaction and acquired the regulated pipeline assets with the intent to maximize efficiencies and increase the return associated with existing regulated assets, while maintaining operational safety and reliability and environmental protection. Shell is entering into this transaction because the assets are presently not strategic to Shell's current business objectives. However, Shell may continue to be a shipper on the pipelines after the sale.

(c) The transfer of the assets will not result in any reduction in the quality of operations. Crimson will possess the technical capability to own, manage, operate, and maintain the public utility assets which it intends to acquire. Oil pipeline safety, including operator personnel, is governed by the U.S. Department of Transportation regulations, which are administered by the California State Fire Marshal. In addition, regulations are currently being developed to qualify pipeline

operators and contractor personnel performing operations and maintenance tasks on hazardous liquid pipelines.

Applicants state that Crimson will have both the technical and financial capability to maintain operations of the utility assets in a safe and reliable manner consistent with their existing authorized uses; Crimson will manage the utility assets in a manner intended to optimize their economic efficiency, consistent with its obligation to maintain the safety and reliability of the pipeline operations, thereby improving the quality of service provided to the public.

Rule 17.1—Information Submitted in Compliance with CEQA:

A Proponent's Environmental Assessment (PEA), as required by Commission Rules of Practice and Procedure (Rules) is included as Attachment E to the application. Under the California Environmental Quality Act (CEQA), the governmental agency responsible for taking discretionary action in reviewing and approving projects is required to consider the environmental effects of the proposed project.[2] The transfer of regulated assets as proposed in this Application is typically subject to CEQA review by the Commission. However, under the CEQA guidelines adopted in Rule 17.1, CEQA review applies only to projects which have the potential for causing a significant effect on the environment. "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."[3]

[2] Cal. Pub. Res. Code Section 21080.

[3] 14 California Code of Regulations, Section 15061(b)(3).

This exemption has been applied in several applications substantially similar to this application. In Application (A.) 99-03-043, Koch Pipeline Company, L.P. sought Commission approval for the transfer of crude oil pipelines, fixtures, appurtenances, right-of-ways, and easements located in Kern county to EOTT Energy Pipeline Limited Partnership (EOTT). EOTT intended to continue to operate the regulated assets in the same manner in which the assets had historically been operated, under the same tariffs and as a common carrier public utility.[4] Similarly, in A.99-10-016, Chevron Pipeline Company sought approval to transfer a crude oil pipeline to Ellwood Pipeline, Inc. The use of the pipeline assets remained unchanged notwithstanding the change in ownership.[5] In each of these instances, the Commission found that the transfer of ownership of the regulated assets did not have the potential for causing a significant effect on the environment, and, as a result, the transfers were exempt from CEQA review.[6]

The present transfer of assets will not result in any change in the product carried by the regulated pipelines, nor will it directly result in any change in the customers using the regulated pipelines or the volumes of product currently transported. Aside from routine operating and maintenance requirements, no construction or modification of the existing physical plant facilities is contemplated. No material changes to any applicable permits will be required as

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[4] D.99-08-007, 1999 Cal. PUC LEXIS 498 at 24-25, Finding of Fact No. 6.

[5] D.00-06-027, Cal. PUC Lexis 252 at, Finding of Fact No. 4.

[6] D.99-08-007, 1999 Cal. PUC LEXIS 498 at 20-21, 27; D.00-06-027, Cal. PUC Lexis 252 at 5, 7.

a result of the transaction, and the ownership, operation, and maintenance of the assets will continue to be governed by the same federal and state safety regulations that are currently applicable. The assets that are currently idle are being sold to Crimson as a condition to Crimson's purchase of active assets. The transfer of these idle assets is not currently anticipated to result in returning them to service.

Given that there will be no change in operations from those currently authorized, it can be seen with certainty that the proposed sale of the pipeline assets to Crimson will have no significant impact upon the environment. As a result, this application is exempt from further CEQA review.

The Protest

Bayoil (USA) Limited (Bayoil) protested the application. It is a shipper of crude oil over the pipelines Shell proposes to transfer to Crimson. Bayoil states that it currently ships 5,000 barrels per day of crude oil over the Ventura 10" trunk pipeline, and 650 barrels per day over the Filmore to Ventura 8" trunk pipeline. In these two trunk lines, as of the end of March 2004, Bayoil owned 62,760.61 barrels of line fill at a cost of $2,327,979.31. Bayoil therefore has over $2.3 million at risk from pipeline leakage, failure, shut down, or inoperability.

Bayoil believes that the application is not justified because Crimson has not filed the required system maps, right-of-ways, permits or list of real properties being acquired; nor has Crimson demonstrated its fitness to acquire the Shell pipeline system. Bayoil contends that Crimson has not demonstrated the operational experience or ability to safely and efficiently operate a crude oil trunk pipeline system at reasonable rates; Crimson has not shown the financial ability to sustain the safe and efficient operation of the pipeline system at reasonable rates; Crimson has not shown that it has the financial wherewithal to

protect shippers, the general public, or the environment against delay or loss in the event of a pipeline mishap.

At a prehearing conference (PHC) held on November 10, 2004, it was determined that only two issues required a hearing:

1. the financial ability of Crimson to operate the pipeline; and
2. the ability of Crimson to acquire adequate insurance.

Hearing was set for January 4, 2005.

On December 28, 2004, the Joint Applicants moved for leave to augment the record. In support of their motion, Joint Applicants assert that inclusion in the record of recently executed agreements between Crimson, its parent, CRMC, and Bayoil, the sole protestant, as well as recently developed information regarding appropriate insurance coverage levels and Crimson's financial capabilities satisfactorily resolve all remaining factual questions. Joint Applicants move to supplement the existing record through submission of: (1) an executed settlement agreement between Crimson and Bayoil resolving Bayoil's protest and (2) the prepared testimony of John Grier addressing Crimson's financial capability and fitness to own and operate public utility pipeline facilities in California as well as the ability of Crimson to acquire adequate insurance.

The Settlement Agreement

The essential terms of the Settlement Agreement are:

(i) CRMC shall provide a guaranty of the operating and capital expenses of Crimson in the amount of $4,500,000. The guaranty will be payable on demand by Crimson for a period of three years after the Closing of the PSA between Shell and Crimson, or after Crimson takes over operation of all pipeline assets

being conveyed to Crimson pursuant to the PSA, whichever is later.

(ii) On or before the Closing of the PSA, Crimson shall (a) obtain environmental liability insurance for its pipeline facilities and operations with a coverage limit of not less than $35,000,000, with a deductible of no more than $1,000,000 in the form of policy(ies) acceptable to the California Department of Fish and Game and (b) cause sufficient metering and check valves and other equipment to be installed such that the worst case spill volume on the pipeline assets Crimson is acquiring pursuant to the PSA will be no more than 2,200 barrels.

(iii) Crimson agrees to establish a gravity bank on the Ventura 10-inch line and agrees that the gravity bank will be administered by Allocation Specialists, Ltd.

(iv) Except for the enforcement of terms of the Settlement Agreement, Bayoil withdraws its protest to the application.

Under the Settlement Agreement, Crimson and Bayoil also contemplated that Crimson and Shell would execute a letter agreement (the Letter Agreement) regarding certain conditions to the Closing of the PSA and the transfer of operation of the pipeline assets (the Letter Agreement is referenced as Exhibit A to the Settlement Agreement). Shell and Crimson have executed the Letter Agreement.

Shell is not a party to the Settlement Agreement and has assumed no obligations or liabilities thereunder. All of Shell's obligations are as set forth in the PSA and in the Letter Agreement. Shell supports the Settlement Agreement and approval of the application, but Shell is not accepting, acknowledging, or otherwise acquiescing to the assumption of any obligations or liabilities other than those set forth in the PSA and the Letter Agreement.

The prepared testimony of John Grier addresses issues including the financial capability and fitness of Crimson to own and operate public utility pipeline facilities in California as well as the ability of Crimson to acquire adequate insurance.

The Grier testimony shows the following: (i) Crimson has made reasonable forecasts of annual revenues and expenses associated with the public utility pipeline operations; (ii) Crimson's ultimate parent, CRMC, has substantial assets and is committed to provide Crimson, if and as needed, with access to investment capital as well as operating funds; and (iii) that relying on reports prepared by experts knowledgeable about environmental damage and general comprehensive liability insurance requirements, Crimson has the ability to acquire adequate insurance.

With regard to insurance adequacy issues, the expert report prepared by Environmental Strategies Consulting LLC sets forth a technical assessment of environmental risk and associated environmental insurance coverage requirements for the pipeline assets at issue. Based on that analysis, the report concludes that insurance ranging from $25 million to $30 million is sufficient to protect against potential environmental risks for Crimson. Crimson, as part of the settlement negotiated with Bayoil has agreed to obtain environmental insurance with a coverage limit of not less than $35,000,000.

Discussion

We will condition our approval of the transfer upon the requirement that (1) Crimson obtain appropriate types and levels of insurance in accordance with the Settlement Agreement between Crimson and Bayoil and as referenced in the Grier testimony and (2) the Commission shall have explicit authority to enforce the financial guaranty. The financial guaranty as proposed is between affiliated

companies. An independent third party with powers of enforcement is needed to assure that the financial integrity of Crimson is preserved in the public interest.

The Settlement Agreement is consistent with Commission decisions on settlements which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.[7] The parties to the Settlement Agreement are the active parties. Thus, the Settlement Agreement is an all-party settlement and satisfies the criteria set forth in decisions on all-party settlements, including D.92-12-019 (All-Party Settlement Decision). We have outlined four conditions that must be satisfied in order for us to approve an all-party settlement. The sponsoring parties must show that:

a. The settlement agreement commands the unanimous sponsorship of all active parties to the proceeding;

b. The sponsoring parties are fairly reflective of the affected interests;

c. No term of the settlement contravenes statutory provisions or prior Commission decisions; and

d. The settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

The Settlement Agreement meets the criteria for an all-party settlement.

[7] See e.g., D.88-12-083 (30 CPUC 2d 289, 221-223) and D.91-05-029 (40 CPUC 2d 301, 326).

The Settling Parties believe that the terms of the Settlement Agreement comply with all applicable statutes and prior Commission decisions. The Settlement Agreement is a reasonable compromise of the Settling Parties' respective positions. The settlement Agreement is in the public interest. We find that the prepared testimony and evidentiary record contain sufficient information for us to judge the reasonableness of the Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by the parties supporting the draft decision.

Categorization and Need for Hearings

In Resolution ALJ 176-3135 dated June 9, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Following receipt of Bayoil's Protest and the completion of the PHC, the Assigned Commissioner issued a Scoping Memo and Ruling changing the "no hearing" designation and scheduling evidentiary hearings. The subsequent filing of the Settlement Agreement has obviated the need for evidentiary hearings and this decision is based on our consideration of the parties' pleadings in this now uncontested proceeding.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. CEQA Guideline Section 15061(b)(3) provides that projects are exempt from CEQA review when it can be seen with certainty that the activity will not have a significant effect on the environment.

2. The proposed transfer will not affect the terms and conditions under which current shippers receive service.

3. CRMC is qualified technically and financially to support the pipeline service of Crimson.

4. The parties to the Settlement Agreement are all of the active parties.

5. The Settling Parties are fairly reflective of the affected interests.

6. No term of the Settlement Agreement contravenes statutory provisions or prior Commission decisions.

7. The Settlement Agreement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

8. The Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest.

9. The protest by Bayoil has been withdrawn and the application is now uncontested.

Conclusions of Law

1. The motion to augment the record is granted.

2. The transfer of assets subject to this application is exempt from CEQA review pursuant to CEQA Guideline Section 15061(b)(3).

3. The Settlement Agreement should be approved.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement is approved.

2. Shell California Pipeline Company LLC (Shell) may sell to Crimson California Pipeline L.P. (Crimson) the public utility pipeline assets, described in the Purchase and Sale Agreement (PSA), the subject of this application, on the following conditions:

(a) Crimson Resource Management Corp. (CRMC) shall provide a guaranty of the operating and capital expenses of Crimson in the amount of $4,500,000 in accordance with the terms and conditions of the guaranty submitted with Mr. John Grier's testimony.

(b) The Closing of the PSA shall not occur until the conditions to Closing set forth in the PSA are satisfied, including Crimson's being in compliance with all applicable Laws (as defined in the PSA), which Laws include those from the California State Fire Marshal and the California Department of Fish and Game that are conditions to Crimson's ownership of the pipeline assets that are the subject of this application.

(c) Shell shall not transfer to Crimson operations of the pipeline assets that are the subject of this application until such time as Crimson has obtained all permits, consents, certificates, or approvals from the California State Fire Marshal and the California Department of Fish and Game that are required by Law as conditions to Buyer's maintenance and operation of such pipeline assets.

(d) On or before the Closing of the PSA, Crimson shall have obtained environmental liability insurance for the pipeline assets that are the subject of this application and the operations thereof with a coverage limit of not less than $35,000,000 having a

deductible of no more than $1,000,000 in a form acceptable to the California Department of Fish and Game.

(e) On or before the Closing of the PSA, Crimson shall have caused sufficient metering and check valves and other equipment to be installed such that the reasonable worst case spill volume on the pipeline assets that are the subject of this application will be no more than 2,200 barrels.

(f) CRMC and Crimson shall provide an amendment to the financial guaranty authorizing this Commission to enforce the guaranty.

(g) After the Closing of the PSA, Crimson will establish a gravity bank on the Ventura 10-inch line and will arrange for the gravity bank to be administered by Allocation Specialists, Ltd.

3. On or before the Closing of the PSA, CRMC and Crimson shall submit to the Commission's Energy Division a statement certifying that Ordering Paragraphs 2(a) through 2(f) have been satisfied.

4. This application is closed.

This order is effective today.

Dated _____, at San Francisco, California.